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7 TTEC DIGITAL, LLC,  
8 Plaintiff,  
9 v.  
10 GO CONFIGURE, LLC,  
11 Defendant.

Case No. 24-cv-08295-JSC

**ORDER RE: MOTION TO DISMISS**

Re: Dkt. No. 49

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13 TTEC Digital, LLC sues Go Configure, LLC for breach of contract, breach of the implied  
14 covenant of good faith and fair dealing, and unjust enrichment. Pending before the Court is  
15 Defendant's motion to dismiss. Having carefully considered the parties' submissions, and with  
16 the benefit of oral argument on August 21, 2025, the Court GRANTS Defendant's motion to  
17 dismiss. The parties' agreement permits Defendant to terminate its three-year commitment for the  
18 technology provided by Plaintiff "with or without cause." So, as currently pled, Defendant did not  
19 commit contractual breach by terminating the agreement and discontinuing payments.

20 **BACKGROUND**

21 **I. COMPLAINT ALLEGATIONS**

22 In July 2019, Avtex Solutions, LLC and Step2 Discovery, LLC entered into a master sales  
23 agreement, which is attached as an exhibit to the complaint. (Dkt. No. 45-1 ¶ 11; Dkt. No. 45-2.)<sup>1</sup>  
24 Section 2(a) of the Master Sales Agreement permits the parties to "execute statements of work for  
25 particular products, designs, developments, and/or other consulting projects." (Dkt. No. 45-1 at  
26 1.) The Master Sales Agreement permits Avtex (later acquired by Plaintiff) to terminate with

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28 <sup>1</sup> Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the  
ECF-generated page numbers at the top of the documents.

1 cause, but Step2 (whose rights were subsequently assigned to Defendant) to terminate “with or  
2 without cause”:

3           Either party has the right to terminate the provision of Solutions<sup>2</sup>  
4 pursuant to this Agreement if the other party (a) breaches or is in  
5 default of any obligation under this Agreement which has not been  
6 cured within 15 days after receipt of written notice of such default.  
7 **Client has the right to terminate the provision of Solutions**  
8 **pursuant to this Agreement upon 30 days prior written notice to**  
9 **Avtex.** Upon termination of the provision of Solutions pursuant to  
10 this Agreement (**with or without cause**): . . . . (b) Client will pay  
11 Avtex for all Solutions rendered through the effective date of  
12 termination in accordance with this Agreement.

13 (Dkt. No. 45-2 at 5 (emphasis added).)

14           In September 2020, Avtex and Step2 entered a contract assignment amendment that  
15 assigned Step2’s “rights, duties, and contractual obligations” to Installations, LLC dba Go  
16 Configure. (Dkt. No. 45-1 ¶ 12; Dkt. No. 45-3 at 1.) Subsequently, a consent to assignment was  
17 entered wherein Defendant “agreed to purchase the assets of Installations.” (Dkt. No. 45-1 ¶ 13;  
18 Dkt. No. 45-4.) Then, Plaintiff TTEC acquired and ultimately merged with Avtex. (Dkt. No. 45-1  
19 ¶ 14.) As summarized by Plaintiff, “[a]fter various transactions, [Plaintiff] TTEC and [Defendant]  
20 Go Configure are now, and for the times relevant to TTEC’s claims were, the parties” to the  
21 relevant agreements. (Dkt. No. 55 at 7 n.1.)

22           In April 2021, “pursuant to the terms of the Master Sales Agreement,” Plaintiff and  
23 Defendant “entered an Amend and Replace Statement of Work,” attached as an exhibit to the  
24 complaint. (Dkt. No. 45-1 ¶ 15; Dkt. No. 45-5.) In the Statement of Work, Defendant “agreed to  
25 a three-year commitment for Genesys Cloud platform services.” (Dkt. No. 45-1 ¶ 16; Dkt. No. 16-  
26 3 at 1-2.) The Statement of Work identifies each product, its quantity, and its price as part of a  
27 “recurring subscription.” (Dkt. No. 45-5 at 3-5.) The Statement of Work provides “use of the  
28 Genesys Cloud platform is governed by the Genesys Cloud End User Agreement” and links to that  
agreement. (*Id.*) By signing the Statement of Work, Defendant “agree[d] to the terms of the [End

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27           <sup>2</sup> “Solutions” are “the product, design, development and/or other consulting services that are  
28 described in each Statement of Work . . . approved by Client and [TTEC] pursuant to section  
2(a).” (Dkt. No. 45-2 at 2.)

1 User Agreement] and . . . its usages of the Genesys Cloud system shall be in accordance with and  
2 bound by the [End User Agreement].” (*Id.*)

3 The End User Agreement, attached as an exhibit to the complaint, “contains terms and  
4 conditions that govern . . . access to, and use of, the Genesys Cloud Service.” (Dkt. No. 45-6 at 2.)  
5 It permits termination of the End User Agreement for cause under specified circumstances:

6 **Termination for Cause.** Either party may terminate the Agreement  
7 upon notice and thirty (30) days opportunity to cure (if susceptible to  
8 cure) if the other party breaches a material term of the Agreement,  
9 makes an assignment for the benefit of creditors, admits in writing its  
10 inability to pay debts as they become due, files a petition in  
bankruptcy under the laws of the United States (or any similar laws  
of any state or country) or appoints a receiver, or acquiesces in the  
appointment of a receiver or trustee, or liquidator. Failure to pay and  
violation of proprietary rights obligations are material breaches.

11 (Dkt. No. 45-1 ¶ 23; Dkt. No. 45-5 at 5.)

12 Plaintiff provided Defendant the Genesys services. (*Id.* ¶ 25.) In March 2023, Defendant  
13 “sent a Notice of Termination Letter informing TTEC that they intended to terminate the Genesys  
14 Cloud subscription and payments.” (*Id.* ¶ 26.) In response, Plaintiff sent Defendant “a Rejection  
15 of Termination letter” explaining “the [End User Agreement] termination provision supersedes the  
16 [Master Sales Agreement] and since Go Configure had not presented any material breaches their  
17 attempt to terminate was not permissible.” (*Id.* ¶ 26.) The letter informed Defendant “if they  
18 failed to make timely payments through the end of the contract term, May 2, 2024, it would be a  
19 material breach of the [Statement of Work] and [End User Agreement].” (*Id.* ¶ 27.) Defendant  
20 “has not made any payments since the Rejection of Termination letter was sent.” (*Id.* ¶ 28.)

## 21 **II. PROCEDURAL HISTORY**

22 Plaintiff filed suit in November 2024, then filed an amended complaint “to allege the  
23 members of each limited liability party and their citizenship.” (Dkt. No. 17 at 1.) The amended  
24 complaint named “Installations, LLC doing business as Go Configure” as the defendant. (Dkt.  
25 No. 16.) Because Installations failed to appear, Plaintiff filed for entry of default, which the Clerk  
26 entered. (Dkt. Nos. 24, 25.) In March 2025, Plaintiff moved for default judgment against  
27 Installations. (Dkt. No. 28.) The following month, Installations sought to continue the default  
28 judgment motion hearing, stating it has been out of business since September 2020. (Dkt. No. 35.)

1 The parties stipulated to set aside the default entered against Installations and to dismiss  
2 Installations from the lawsuit. (Dkt. No. 40.) In that stipulation, the parties agreed the “First  
3 Amended Complaint should be amended to delete ‘Installations, LLC d/b/a Go Configure,’ and  
4 substitute ‘Go Configure, LLC’ as the defendant in this action.” (*Id.*)

5 Plaintiff thereafter filed the operative second amended complaint, which Defendant now  
6 moves to dismiss.

## 7 DISCUSSION

8 Defendant moves to dismiss all causes of action (breach of contract, breach of the implied  
9 covenant of good faith and fair dealing, and unjust enrichment) on the ground each fails to state a  
10 claim upon which relief can be granted.

### 11 A. Breach of Contract

12 “The elements of a cause of action for breach of contract include the existence of a  
13 contract, the plaintiff’s performance or excuse for nonperformance, the defendant’s breach, and  
14 resulting damages to the plaintiff.” *J.B.B. Inv. Partners Ltd. v. Fair*, 37 Cal. App. 5th 1, 9 (2019).  
15 Defendant does not dispute the existence or validity of the contracts at issue, including the Master  
16 Sales Agreement, Statement of Work, and End User Agreement.<sup>3</sup> The parties dispute whether the  
17 Master Sales Agreement’s or the End User Agreement’s termination language controls. The  
18 Master Sales Agreement permits Defendant to terminate without cause upon 30 days written  
19 notice, while the End User Agreement only allows Defendant to terminate with cause. (*Compare*  
20 Dkt. No. 45-2 at 5, *with* Dkt. No. 45-5 at 5.)

21 If the Master Sale Agreement’s termination provision controls, Plaintiff’s breach of  
22 contract claim fails as Defendant could validly terminate the three-year Statement of Work  
23 without cause—as allegedly occurred in this case. If the End User Agreement termination  
24 controls, Plaintiff states a claim for breach of contract because, as alleged in the complaint,  
25 Defendant did not present any material breaches constituting good cause. Plaintiff insists it states

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27 <sup>3</sup> These three agreements are incorporated by reference because “they form the basis of the  
complaint.” *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). As such, the Court  
28 “may assume that [their] contents are true.” *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir.  
2006).

1 a claim because the Master Sales Agreement’s termination clause “conflict[s] with the termination  
2 clause in the [Statement of Work] and [End User Agreement]” and those latter agreements,  
3 entered into after the Master Sales Agreement, control. (Dkt. No. 55 at 11.) *See Suski v.*  
4 *Coinbase, Inc.*, 55 F.4th 1227, 1230 (9th Cir. 2022), *aff’d*, 602 U.S. 143 (2024) (“[W]hen parties  
5 enter into a second contract dealing with the same subject matter as their first contract without  
6 stating whether the second contract operates to discharge or substitute for the first contract, the  
7 two contracts must be interpreted together and the latter contract prevails to the extent they are  
8 inconsistent”) (cleaned up).

9 Contract interpretation “is a question of law.” *Shivkov v. Artex Risk Sols., Inc.*, 974 F.3d  
10 1051, 1063 (9th Cir. 2020). The Court’s task “is to discern the mutual intent of the parties at the  
11 time the contract was formed.” *Pension Tr. Fund for Operating Eng’rs v. Fed. Ins. Co.*, 307 F.3d  
12 944, 950 (9th Cir. 2002) (citing Cal. Civ. Code § 1636).<sup>4</sup> “The best evidence of the parties’ intent  
13 is the plain language of the policy.” *Id.* (citing *AIU Ins. Co. v. Superior Ct.*, 51 Cal. 3d 807, 822  
14 (1990)). “The clear and explicit meaning of these provisions, interpreted in their ordinary and  
15 popular sense, unless used by the parties in a technical sense or a special meaning is given to them  
16 by usage, controls judicial interpretation.” *AIU Ins. Co.*, 51 Cal. 3d at 822 (cleaned up). “The  
17 terms of a contract must be construed in a manner that takes into account the context of the  
18 language and is consistent with the contract as a whole.” *Great Minds v. Off. Depot, Inc.*, 945  
19 F.3d 1106, 1110 (9th Cir. 2019) (cleaned up); *see also Van Ness v. Blue Cross of California*, 87  
20 Cal. App. 4th 364, 372 (2001) (courts should “read a contract as a whole in order to ‘give effect to  
21 every part, if reasonably practicable, each clause helping to interpret the other’”) (quoting Cal.  
22 Civ. Code § 1641).

23 The plain language of the Statement of Work does not conflict with the Master Sales  
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26 <sup>4</sup> Plaintiff asserts the action “is governed by California law.” (Dkt. No. 55 at 9 n.2.) As  
27 Defendant observes, “[t]he [Statement of Work] does not contain a governing law provision. The  
28 [End User Agreement] contains a governing law provision referring to California law. The [Master  
Sales Agreement’s] governing law provision refers to Ohio law. . . . Plaintiff does not argue that  
Ohio law compels denial of Defendant’s Motion or provides a different result than California  
law.” (Dkt. No. 56 at 7.) Because neither party argues Ohio compels a different result than  
California law, the Court applies California law.

1 Agreement. The Statement of Work says nothing about termination. (Dkt. No. 45-5.) Indeed, it  
2 says it is made “pursuant to the terms of the Master Sales Agreement.” (*Id.* at 3.) Likewise, the  
3 Master Sales Agreement says “[t]he provision of services covered by a Statement of Work will be  
4 subject to the terms of this Agreement and the additional terms, conditions and limitations set  
5 forth in the Statement of Work.” (Dkt. No. 45-2 at 2.) Based on this plain and unambiguous  
6 language, the Master Sales Agreement’s termination provision—a term of the Master Sales  
7 Agreement—applies to the Statement of Work.

8 The plain and unambiguous language of the End User Agreement also does not conflict  
9 with the Master Sales Agreement. The End User Agreement provides “[e]ither party may  
10 terminate *the Agreement* upon notice and thirty (30) days opportunity to cure” and sets forth  
11 specific circumstances when termination is permitted. (Dkt. No. 45-6 at 5 (emphasis added).) So,  
12 cause is required for either party to terminate “*the Agreement*.” But “*the Agreement*” refers to the  
13 End User Agreement. (*Id.* at 2 (“This Genesys Cloud End User Agreement and the documents  
14 referenced herein (the ‘Agreement’) contain terms and conditions that govern Your access to, and  
15 use of, the Genesys Cloud Service . . .”)). “*The Agreement*” does not include the Statement of  
16 Work; indeed, it expressly identifies itself as different from the Statement of Work. It says “[i]n  
17 the event of a conflict between the terms of a Services Order or [Statement of Work] and the other  
18 provisions of *the Agreement*, . . . the terms of the Agreement will take precedence.” (*Id.* at 7  
19 (emphasis added).) “*The Agreement*” cannot include the Statement of Work; otherwise, “*the  
20 Agreement will take precedence*” over the Statement of Work would make no sense. So, “*the  
21 Agreement*” does not include the Statement of Work. As a result, there is no inconsistency  
22 between the Master Sales Agreement termination provision and the End User Agreement  
23 termination provision. The Master Sales Agreement termination provision applies to the  
24 Statement of Work and the End User Agreement termination provision applies to the End User  
25 Agreement—“*the Agreement*” as defined in the End User Agreement. Accordingly, the Master  
26 Sales Agreement termination provision, which permits termination with or without cause, still  
27 applies to the Statement of Work. (Dkt. No. 45-2 at 2 (“The provision of services covered by a  
28 Statement of Work will be subject to the terms of [the Master Sales Agreement] and the additional

1 terms, conditions and limitations set forth in the Statement of Work.”).)

2 Plaintiff’s reliance on *Suski* is thus misplaced. *Suski* applied the California general rule  
3 that “when parties enter into a second contract dealing with the same subject matter as their first  
4 contract without stating whether the second contract operates to discharge or substitute for the first  
5 contract, the two contracts must be interpreted together and the latter contract prevails to the extent  
6 they are inconsistent.” 55 F.4th at 1230. That general rule does not apply here because the subject  
7 matter of the End User Agreement and the subject matter of the Statement of Work (which  
8 incorporates the terms of the Master Sales Agreement) are not the same. The Statement of Work  
9 identifies the ordered products, pricing, and subscription term. The End User Agreement  
10 separately governs the license for access to and use of the Genesys Cloud Services, for example,  
11 limiting the scope of use to Defendant and Defendant’s affiliates, indemnification with respect to  
12 any claims that the unaltered Genesys Cloud Service infringes patents, confidentiality  
13 requirements, warranty obligations, etc.

14 A separate provision in the End User Agreement reinforces the conclusion that the subject  
15 matter of the End User Agreement and Statement of Work is not the same. The End User  
16 Agreement provides “[t]his Agreement constitutes the entire agreement and understanding of the  
17 parties *relating to the subject matter hereof*, superseding all prior or contemporaneous agreements,  
18 representations, promises and understandings, whether written, electronic, oral or otherwise.”  
19 (Dkt. No. 45-6 at 2 (emphasis added).) If the subject matter of the two contracts is the same, then  
20 the End User Agreement supersedes the prior Statement of Work. And if the End User Agreement  
21 supersedes the Statement of Work, there remains no agreement on subscription products, pricing,  
22 or length. This nonsense result is avoided by interpreting the subject matter of the End User  
23 Agreement and Statement of Work according to their plain terms. The End User Agreement’s  
24 “subject matter” is the license terms while the Statement of Work’s subject matter is the provided  
25 products, pricing, and subscription term. As the subject matter of the two agreements is different,  
26 there is no inconsistency and *Suski* does not apply.

27 At oral argument Plaintiff insisted the End User Agreement was incorporated into the  
28 Statement of Work and therefore its termination provision applies as part of the Statement of

1 Work. But there is no language in the Statement of Work (or End User Agreement) saying as  
2 much. *See R.W.L. Enters. v. Oldcastle, Inc.*, 17 Cal. App. 5th 1019, 1027–28 (2017) (“For the  
3 terms of another document to be incorporated into the document executed by the parties the  
4 reference must be clear and unequivocal”) (cleaned up). Instead, the Statement of Work provides  
5 it is entered into “pursuant to the terms of the Master Sales Agreement.” It also says that by  
6 entering into the Statement of Work, Defendant is agreeing to the terms of the End User  
7 Agreement and that the End User Agreement governs *the use of* the Genesys Cloud System—that  
8 is, the license to use the Genesys Cloud System. So, Defendant *agreed to* the End User  
9 Agreement by signing the Statement of Work: “[b]y signing this [Statement of Work], Client  
10 agrees to the terms of the [End User Agreement] . . . and its usages of the Genesys Cloud System  
11 shall be in accordance with and bound by the [End User Agreement].” (Dkt. No. 45-5 at 3.) And,  
12 the End User Agreement governs “access to, and the use of,” the Genesys Cloud System by  
13 providing a non-exclusive license to the System. (Dkt. No. 45-6 at 2.) But the Statement of  
14 Work’s plain and unambiguous language nowhere incorporates the separate End User Agreement  
15 into the Statement of Work such that an inconsistency with the Master Sale Agreement’s  
16 termination clause can be manufactured.

17 Plaintiff’s reliance on *Tulare Golf Course, LLC v. Vantage Tag, Inc.*, No. 1:21-cv-00505-  
18 JLT-SKO, 2023 WL 2587994 (E.D. Cal. Mar. 21, 2023) is likewise unavailing. There, the  
19 plaintiff entered a Service-Lease Contract with the defendant containing an arbitration provision.  
20 *Id.* at \*1. The following month, the defendant requested the plaintiff “execute an additional  
21 contract entitled Extend Payment Terms Article . . . , which included the same payment price and  
22 product description” as the prior contract and no arbitration provision but rather a provision stating  
23 the plaintiff “consents to jurisdiction and venue in New York.” *Id.* “Because the Payment  
24 Contract unambiguously direct[ed] parties to bring suit in a New York court, the Court  
25 conclude[d] the parties did not intend to incorporate the arbitration requirement of the Service-  
26 Lease Contract.” *Id.* at \*7. But in *Tulare*, unlike here, the two contracts covered the same subject  
27 matter but were inconsistent as to forum. Here, in contrast, the subject matter of each contract,  
28 while related, is different.

1 Plaintiff also argues the terms of the Statement of Work and End User Agreement “govern  
2 this dispute since they form the more specific agreement and encompass the subject matter of this  
3 lawsuit.” (Dkt. No. 55 at 11-12.) Plaintiff cites *Oracle Am., Inc. v. Procore Techs., Inc.*, No. 24-  
4 CV-07457-JST, 2025 WL 1069892 (N.D. Cal. Apr. 9, 2025) in support of this argument, in which  
5 the plaintiff signed an employment agreement containing an arbitration provision and a proprietary  
6 information agreement containing a venue provision. The court applied the “standard rule of  
7 contract interpretation that specific terms control over general ones” to deny the defendant’s  
8 motion to compel arbitration of the plaintiff’s claims for trade secret misappropriation. *Id.* at \*4.  
9 Taking the employment and proprietary information agreements together, the court concluded “the  
10 most natural reading is that claims that arise under the more specific terms of the Proprietary  
11 Information Agreement are subject to that agreement’s venue provision rather than the more  
12 general Employment Agreement’s arbitration provision.” *Id.* This principle from *Oracle* is  
13 consistent with the Court’s conclusion here. *See id.* Plaintiff’s claim that Defendant’s early  
14 termination of the Genesys Cloud Services constituted breach relates to the length of Defendant’s  
15 Genesys Cloud subscription, which is set forth in the Statement of Work made “pursuant to the  
16 terms of the Master Sales Agreement.” Because the Statement of Work sets forth the terms which  
17 are the subject of the claim in this action, the Statement of Work—issued pursuant to the Master  
18 Sales Agreement—governs the claim. In contrast, claims about the specific license would arise  
19 under the End User Agreement and would thus be subject to the End User Agreement’s terms.

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21 In sum, based on the second amended complaint’s allegations, and the relevant contracts’  
22 plain and unambiguous language, the End User Agreement’s termination clause does not apply to  
23 the Statement of Work; so, the breach of contract claim fails.

24 **B. Breach of Implied Covenant of Good Faith and Fair Dealing**

25 In the second cause of action, Plaintiff alleges “Go Configure’s conduct following the  
26 execution of the Agreements breached the implied covenant of good faith and fair dealing.” (Dkt.  
27 No. 45-1 at 39.) Defendant moves to dismiss this claim on the ground it “does not go beyond  
28 stating a mere contractual breach” and thus is “superfluous and/or duplicative.” (Dkt. No. 49 at

1 16.)

2 “A breach of the implied covenant of good faith and fair dealing involves something  
3 beyond breach of the contractual duty itself.” *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222  
4 Cal. App. 3d 1371, 1393 (1990) (cleaned up). Allegations must show “that the conduct of the  
5 defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a  
6 failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad  
7 judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the  
8 agreed common purposes and disappoints the reasonable expectations of the other party thereby  
9 depriving that party of the benefits of the agreement.” *Id.* “If the allegations do not go beyond the  
10 statement of a mere contract breach and, relying on the same alleged acts, simply seek the same  
11 damages or other relief already claimed in a companion contract cause of action, they may be  
12 disregarded as superfluous as no additional claim is actually stated.” *Id.* at 1395.

13 Here, the breach of implied covenant of good faith and fair dealing cause of action states  
14 no additional claim. The second amended complaint merely states the agreements “contain[ed]  
15 implied covenants of good faith and fair dealing” and “Go Configure’s conduct following the  
16 execution of the Agreements breached [that] implied covenant.” (Dkt. No. 45-1 ¶¶ 38-39.) Such  
17 conclusory allegations do not support a plausible inference Defendant breached the implied  
18 covenant of good faith and fair dealing, particularly when the Court does not know what specific  
19 conduct is at issue. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the  
20 elements of a cause of action, supported by mere conclusory statements, do not suffice.”).

21 In opposition, Plaintiff contends Defendant’s “conduct went beyond mere breach. It was a  
22 conscious and deliberate act which frustrated the purposes of the agreements and deprived TTEC  
23 of the benefits of the [Statement of Work] and [Marketing Services Agreement].” (Dkt. No. 55 at  
24 14.) But the second amended complaint contains no specific factual allegations supporting this  
25 conclusory assertion. Moreover, in arguing it sufficiently alleged this claim, Plaintiff’s opposition  
26 brief cites paragraphs 25-30 in the complaint. Those paragraphs all appear under the heading “Go  
27 Configure breaches its contractual commitment under the agreements.” (Dkt. No. 45-1 at 5.)  
28 Because Plaintiff “rel[ies] on the same alleged acts” for its contract and implied covenant of good

1 faith and fair dealing claims, the latter claim is “superfluous” and “may be disregarded.” *See*  
2 *Careau*, 222 Cal. App. 3d at 1395.

3 So, the Court GRANTS Defendant’s motion to dismiss the second cause of action.

4 **C. Unjust Enrichment**

5 The third cause of action alleges “[a]t the expense of TTEC, Go Configure received the  
6 benefits of TTEC’s performance under the Agreements described above” and “Go Configure  
7 engaged in wasteful, misleading, deceitful, or otherwise improper conduct that would make it  
8 unjust for it to retain the above benefits without repaying said benefits to TTEC.” (Dkt. No. 45-1  
9 ¶¶ 42-43.) Defendant moves to dismiss the unjust enrichment cause of action on several grounds.

10 First, Defendant argues the claim is not legally cognizable because “it is unclear that an  
11 unjust enrichment claim exists under California law.” (Dkt. No. 49 at 17.) California courts have  
12 reached different conclusions on this issue. *See ESG Cap. Partners, LP v. Stratos*, 828 F.3d 1023,  
13 1038 (9th Cir. 2016) (“Some California courts allow a plaintiff to state a cause of action for unjust  
14 enrichment, while others have maintained that California has no such cause of action.”). The *ESG*  
15 court notes “this Circuit has construed the common law to allow an unjust enrichment cause of  
16 action through quasi-contract.” *Id.* Given the *ESG* court’s guidance, the Court declines to dismiss  
17 the unjust enrichment claim on the ground it is not legally cognizable. *See, e.g., Weingand v.*  
18 *Harland Fin. Sols., Inc.*, No. C-11-3109 EMC, 2012 WL 3763640, at \*4 (N.D. Cal. Aug. 29,  
19 2012) (stating “a court may construe an unjust enrichment claim as an attempt to plead a cause of  
20 action giving rise to a right to restitution . . . in lieu of contract damages, such as when an express  
21 contract was procured by fraud, is unenforceable, or is ineffective or when a plaintiff chooses to  
22 seek restitution on a quasi-contract theory instead of suing in tort”) (cleaned up).

23 Nevertheless, the Court agrees with Defendant that Plaintiff has not pled sufficient facts to  
24 support a quasi-contract claim seeking restitution. “[R]estitution may be awarded in lieu of breach  
25 of contract damages when the parties had an express contract, but it was procured by fraud or is  
26 unenforceable or ineffective for some reason.” *Rutherford Holdings, LLC v. Plaza Del Rey*, 223  
27 Cal. App. 4th 221, 231 (2014). To do so, a party must allege “in that cause of action[] that the  
28 express contract is void or was rescinded.” *Id.* Here, Plaintiff’s unjust enrichment cause of action

1 does not allege the parties' express contract "is void or was rescinded," nor does Plaintiff allege  
2 any contract "was procured by fraud or is unenforceable or ineffective for some reason." *See id.*  
3 So, Plaintiff has not stated a claim for unjust enrichment.

4 Plaintiff may plead unjust enrichment/restitution in the alternative to breach of contract.  
5 Fed. R. Civ. P. 8(d)(2) ("A party may state as many separate claims or defenses as it has,  
6 regardless of consistency."); *see also Weingand*, 2012 WL 3763640, at \*4 ("[E]ven though a  
7 plaintiff may not ultimately prevail under both unjust enrichment and breach of contract, it may  
8 plead both in the alternative."). "A plaintiff may not, however, pursue or recover on a quasi-  
9 contract claim if the parties have an enforceable agreement regarding a particular subject matter."  
10 *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1388 (2012). According to Plaintiff, "it is  
11 undisputed that the [Master Sales Agreement], [Statement of Work] and [End User Agreement]  
12 are valid and binding contracts." (Dkt. No. 55 at 12.) This assertion in Plaintiff's opposition brief  
13 undermines the second amended complaint's quasi-contract unjust enrichment claim.

14 So, the Court GRANTS Defendant's motion to dismiss the third cause of action.

15 **CONCLUSION**

16 For the reasons stated above, the Court GRANTS Defendant's motion to dismiss with  
17 leave to amend. The deadline to file an amended complaint is September 18, 2025, provided  
18 Plaintiff believes it can amend its claims consistent with Federal Rule of Civil Procedure 11. No  
19 new claims or defendants may be added without prior Court order. The Court sets an initial case  
20 management conference for October 1, 2025 at 2:00 p.m. via Zoom video. A joint case  
21 management conference statement is due one week in advance.

22 This Order disposes of Docket No. 49.

23 **IT IS SO ORDERED.**

24 Dated: August 27, 2025

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JACQUELINE SCOTT CORLEY  
United States District Judge